

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

OA 479 of 1990

Date of decision 15th January, 1991

Shri Paoran Singh

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Applicant

versus

1. Union of India through the Chairman,
Railway Board, Rail Bhavan,
New Delhi.
2. The General Manager,
Northern Railways, Baroda House,
New Delhi. Respondents

Coram: Hon'ble Mr. B.S. Sekhon, Vice-Chairman
Hon'ble Mr. P.C. Jain, Administrative Member.

For the applicant - Shri B.B. Ravel, Advocate.
For the respondents - Shri Inderjit Sharma, Advocate.

B.S. SEKHON:

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Skipping superfluities, Applicant retired from Railway service on 31st July, 1988, while he was working as P.W.I., Bikaner Northern Railways. Penalty of withholding of one increment for a period of one year without postponing future increments was imposed on the applicant vide order dated 6th November, 1987 (Annexure A-1) made by the Chief Engineer/Construction, Central. Applicant preferred an appeal dated 8th December, 1987 (Annexure A-2) against the same. The appellate authority reduced the penalty of withholding of one increment from ^{one} year to only 1½ month vide order dated 8th June, 1989 (Annexure A-3).

2. Applicant has assailed the appellate order, inter-alia, on the grounds that it is a case of perpetual harassment; the

✓ (6)

order is non-speaking. Another charge-sheet (Annexure A-4) was served on the applicant on 27-11-87 in respect of the charges set out in the articles of charge Annexure-I to Annexure-IV thereto. We were given to understand that the enquiry initiated on the basis of this charge-sheet, has since been concluded in favour of the applicant. The other grievance, which the applicant has agitated, pertains to non-payment of retiral benefits including death-cum-retirement gratuity and commuted amount of pension, including interest thereon, /

With the aforesaid averments, the applicant has asked for the following reliefs:-

- (i) direct the respondents to immediately make payment of the applicant's commuted value of the pension after correcting the pension amount due at Rs. 1268/- in place of Rs. 1194/- with 18% interest till realisation;
- (ii) direct the respondents to release the gratuity by retaining only a balance of Rs. 1,000/- to be paid with 18% interest forthwith on supply of findings of the disciplinary authority which may be directed to be issued at the earliest; and
- (iii) strike down the non-speaking order dated 8th June, 1989 withholding the increment of the applicant for a period of 1½ months and restore the amount of his pensionary benefits proportionately.

3. Respondents' defence as disclosed in the counter is that the order dated 8th June, 1989 was correctly made. Respondents have denied the assertion about its not being a speaking order. In regard to the delay in granting the provisional pension, the respondents have stated that the applicant retired from service while he was working under the Construction Organisation, his dues relating to Provident Fund, insurance and leave encashment were arranged by Construction Organisation; his case for sanction of

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(A)
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pension and DCRG was forwarded to D.R.M. Office at New Delhi; since there was some dispute regarding the promotion of the applicant from one Ex-cadre post to another ex-cadre post, the matter was finally settled by discussion between Sr. D.A.O. and DRM-II New Delhi. Regarding the gratuity and commuted value of pension, the reasons given for not allowing the same so far are that some outstanding items of P.way material were found for the period during which the applicant was working as PWI, Saharanpur; the Sr. Civil Engineer/Constn., Saharanpur addressed letter No.11-S/C/SSBL BRE dated 1.12.88(Annexure R-1) to the Dy. Chief Engineer/Constn. Northern Railway, Bikaner where the applicant was then working with the request that the applicant be asked to clarify the position to finalise the outstanding items of P.way material or necessary cost of the material be recovered from him. The value of the aforesaid material is stated to be near about Rs. 89,000/-. Applicant was also asked vide letter dated 9th December, 1988(Annexure R-2) followed by a reminder dated 13th December, 1988(Annexure R-3) to clarify the position.

4. We have heard the arguments addressed by the learned counsel for the parties and have given our earnest consideration to the pleadings of the parties and the material on record.

5. As is borne out from Annexure A-3, the appellate authority passed the following order on the appeal preferred by the applicant:-

"reduce the punishment from W.I.T. 1 year to only 1½ month."

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The aforesaid order cannot conceivably be regarded as a speaking order. The appellate authority has also not dealt with the grounds raised in the appeal, which the appellate authority was



expected to adjudicate. Since the order made by the appellate authority is not an order of affirmance, such an unreasoned/non-speaking order is clearly unsustainable at law. Consequently, Annexure A-3 is hereby quashed. The respondents shall recompute the quantum of pension on the basis as if the order dated 8th June, 1989 (Annexure A-3) does not exist. The respondents are hereby directed to do so and pay the arrears of pension, if any, within a period of two months from the date of receipt of a copy of this judgment.

6. It is admitted on both hands that DCRG and commuted value of pension have not so far been paid to the applicant. We may pause here and state that pension and gratuity are valuable rights and property which become payable to the retiree. There is a catena of authorities including the authority of the Supreme Court in *State of Kerala and others v. M. Padmanabhan Nair*¹

that the culpable delay in settlement and disbursement of pension and gratuity must be visited with the penalty of payment of interest at the current market rate. The learned counsel for the applicant strenuously urged that there is no justification whatsoever on the part of the respondents to withhold the DCRG and the commuted value of pension. The learned counsel submitted that the respondents had been withholding the retiral dues of the applicant malafide with a view to harassing him. The learned counsel for the respondents inviting our attention to paragraph 4.11 and to Annexures R-1, R-2 and R-3 submitted that certain outstanding items of P.W. material were found and that these pertained to the period during which the applicant was working as P.W.I. Saharanpur. So saying, the learned counsel stated that the correspondence Annexures R-1, R-2 and R-3 also supports his assertion and that the gratuity and

1. AIR 1985 SC 356.

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commuted value of pension were not paid to the applicant in view of the foregoing. Annexure R-1 dated 1.12.88 was addressed by the Sr. Civil Engineer/Const. Saharanpur to the Deputy Chief Engineer/Const. Northern Railway Bikaner. The alleged shortage was discovered during 1983 and 1984. Some of it also pertained to the early period of 1985. Annexures R-2 and R-3 dated 9.12.88 and 13.12.88 respectively were addressed to the applicant. As envisaged by para 2308 of the Indian Railways Establishment Code, which has also been extracted in paragraphs 315 and 316 of the Manual of Railway Pension Rules, 1950, pension as also DCRG can be withheld only if either the pensioner has been found guilty of grave mis-conduct or negligence during the period of his service, including service rendered on re-employment in a departmental proceeding/ ~~judicial proceeding~~ ^{judicial proceeding} or either proceedings on the charges of grave mis-conduct or negligence are pending. No such departmental proceedings have so far been instituted against the applicant. That being the position of matters, withholding of DCRG of the applicant lacks total justification. We are fortified in the view we have taken by the decision of the Full Bench rendered in 'Shri Amrit Singh v. Union of India and others'² and by the dictum of the Supreme Court in D.V.Kapoor v. Union of India and others³. In D.V.Kapoor (supra), the import and effect of Rule 9 of the CCS (Pension) Rules, 1972 which is on lines similar to para 2308 of the Indian Railways Establishment Code, was considered by the Supreme Court. The authority of State of Uttar Pradesh v. Brahm Datt Sharma and another⁴ relied upon by the learned counsel for the applicant also fortifies the view we have taken. In the circumstances, we have no hesitation in returning a finding that withholding of DCRG was totally unjustified and that the delay in payment thereof cannot but be held to be culpable. ^{Thus} the claim of

2. 1988(4) SLJ(C.A.T.)1023.

3. AIR 1990 SC 1923

4. (1987) 2 SCC 179

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interest on the unpaid amount of DCRG is well-founded. The gratuity should have been paid within a period of three months of retirement of the applicant. As this has not been done, applicant is entitled to interest on the amount of gratuity at the rate of 12% per annum from 1-11-88 till the date of actual payment.

7. Since provisional pension has already been paid to the applicant, the non-payment of commuted value of pension should not burden the respondents with the liability to pay interest. It is, however, a separate question that the respondents should pay commuted value of pension to the applicant within the period specified hereinafter. There has been delay in the payment of provision^{-al}/pension also. The learned counsel for the respondents submitted that the delay was neither intentional nor culpable and that it had been occasioned for the reasons that case of the applicant for sanction of pension had to be settled in consultation with several authorities, including DRM office New Delhi and there was a dispute regarding the promotion of the applicant from one ex-cadre post to another ex-cadre post. The learned counsel added that the matter was finally settled at discussion between the Sr. D.A.O. and D.R.M.-II, New Delhi. After giving our thoughtful consideration to the matter, we are of the view that there has been no culpable delay in the grant of provisional pension.

8. In the premises, the respondents are hereby directed to pay the DCRG togetherwith interest at the rate of 12% thereon with effect from 1-11-88 till the date of actual payment. The respondents are also directed to compute the commuted value of pension and pay the same to the applicant within a period of two months from the date of receipt of a copy of this judgment. Applicant's claim for interest on the alleged delay in payment

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of provisional pension is not allowed. The respondents are also directed to pay the difference including arrears of pension, if any, which may be found due to the applicant as a result of recalculation of quantum of pension on the basis that the order dated 8-6-89 Annexure A-3 does not exist. It is scarcely necessary to add that while computing the arrears of pension on this count, respondents shall also make adjustment resulting from the payment of commuted value of pension.

9. The Application is disposed of in the terms stated hereinabove, but in the circumstances, we make no order as to costs.

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(P.C.JAIN)
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B. S. Sekhon
(B.S.SEKHON)
VC.

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